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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P. No.3233/2005

PETITIONER:

Radha Mohan Rai
Aged about 55 years
S/O Shri Chandrika Prasad Rai, R/O Nagar Panchayat Baradwar Ward No. 8
District Janjgir - Champa (Chhattisgarh)

P.R. No. 3325/05 Presented by Shri Radha Mohan Rai dated 19/12/05

VERSUS

RESPONDENTS:

1. State of Chhattisgarh
Through the Secretary
Department of Home
D.K.S. Bhawan, Mantralaya
Raipur (Chhattisgarh)

2. District Magistrate (Collector)
Janjgir
District Janjgir-Champa
(Chhattisgarh)

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS OF MANDAMUS AND CERTIORARI AND FOR OTHER SUITABLE WRITS AND DIRECTIONS:-

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3233 of 2005

Radha Mohan Rai

-Versus-

State of Chhattisgarh & another

Post for order on 16th November, 2005.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 3233 of 2005

Radha Mohan Rai

-Versus-

State of Chhattisgarh & another

Mr. Prateek Sharma, Advocate for the petitioner.

Mr. Yashwant Singh Thakur, Govt. Advocate for the Respondents.

ORDER

(16th November, 2005)

By Justice Satish K. Agnihotri.

1. The present petition filed under Article 226/227 of the Constitution of India impugns the order dated 23.12.2004, passed by the District Magistrate, Janjgir Champa thereby the petitioner was removed from the territorial limits of district Janjgir Champa and other adjacent districts Raigarh, Korba, Bilaspur, and Raipur for a period of one year w.e.f. 23.12.2004. The petitioner further impugns the order dated 26.2.2005 passed in appeal, affirming the order dated 23.12.2004, by the Additional Chief Secretary, Home, Govt. of Chhattisgarh.

2. The brief facts in this case are that as many as 23 cases were registered from the year 1973 to March, 2004 against the petitioner for committing offences of theft, dacoity, rioting, Gundagardi, criminal intimidation, assaulting general public and Govt. officials, creating interference with the functioning of the Govt. officials, keeping illegally liquor and unauthorised arms under section 34 (1) a, 49 of the Excise Act and sections 107, 116(3), 120, 147, 186, 225, 294, 323, 332, 341, 342, 353, 379, 384, 392, 408, 420, 448, 467, 468, 506, 506-B of the Indian Penal Code and Sections 25 and 27 of the Arms Act.

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3. Out of 23 cases registered against the petitioner, in four cases there was settlement, 13 cases are pending in the Court, in 2 cases i.e. Case No. 162/99 three years and one month's rigorous imprisonment and Rs. 400/- fine was awarded for the offence committed under sections 353, 332, 186, 294, 506 of the I.P.C. read with Section 3 (1-10) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities)Act, and in Case No. 184/2001 for an offence committed under section 34(1), 49 of the Excise Act, the petitioner was convicted for two years rigorous imprisonment with fine of Rs. 75,000/-. In both the cases the petitioner was acquitted in appeal. The movements and acts of the petitioner had been causing danger or alarm to the persons at large wherein the witnesses are not willing to come forward to give evidence in public against the petitioner by reasons of apprehension on their part, as regards safety of the persons and property. The Respondent No.2 District Magistrate, Janjgir Champa, issued a notice on 11.10.2004 to show cause as to why the action be not taken against the petitioner under sections 3 and 5 of the Chhattisgarh Rajya Suraksha Adhiniyam, 1990 (in short 'the Act, 1990'). The said show cause notice contained history of 23 cases, 20 cases pending against the petitioner, charge sheets for disturbing peace, complaint by citizen of Baradwar for assaulting, criminal intimidation, Gundagardi, destruction of the property by the petitioner and his associates and two rojnamcha sanha were also stated to be pending for creating terror and further creating terror in the election.

4. The petitioner submitted detailed reply on 23.10.2004 wherein the question of double jeopardy was raised on the ground that no action could be taken against the petitioner under section 3 read with section 5 of the Act, 1990 on the basis of past cases wherein either

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the cases are pending or the petitioner had been acquitted by the appellate Court.

5. The Respondent No.2 after hearing the evidences of the prosecution and that of the petitioner as well as the submissions of both the parties passed a detailed order running into 19 pages. It was held that it has clearly been established that the petitioner had been engaged in the past and he was likely to be engaged in the offences involving force or violence in causing alarm, danger or terror to the public peace, and law & order of the society in the district. In view of the above, the District Magistrate in exercise of the powers under sections 3 and 5 of the Act, 1990 removed the petitioner from the territory of the district Janjgir Champa and territorial limits of the adjacent districts i.e. Raigarh, Korba, Bilaspur, Raipur for a period of one year vide order dated 23.12.2004, with immediate effect.

6. Being aggrieved, the petitioner filed an appeal before the State Government. The Additional Chief Secretary, Home, considered all the submissions of the petitioner and examined the case in detail. The Additional Chief Secretary came to the conclusion that the offences and the activities committed by the petitioner and likely to be committed by the petitioner were offences punishable under Chapter XVI or XVII or under section 506 of the I.P.C. Accordingly the Additional Chief Secretary confirmed the order dated 23.12.2004 passed by the District Magistrate.

7. The petitioner filed this petition impugning the orders dated 23.12.2004 passed by the District Magistrate and the order dated 26.2.2005 passed in appeal by the Additional Chief Secretary, Home on the grounds that the petitioner had already been externed on 8.10.2002 for the identical or similar charges, only one or two new charges were mentioned at Srl. No. 21 to 24 in the impugned order

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dated 23.12.2004, which entails violation of the fundamental right of the petitioner as enshrined under Article 20 of the Constitution of India.

8. Mr. Prateek Sharma, learned counsel for the petitioner submitted that the charges alleged in the impugned order dated 23.12.2004 were without any basis and did not establish guilt of the petitioner so as to invoke the jurisdiction under Sections 3 and 5 of the Act, 1990. It was further submitted that the petitioner was holding the post of the office of the Vice President of Nagar Panchayat Baradwar for two terms in the year 1994 and 2002, and his wife was also the President of the aforesaid Nagar Panchayat. The petitioner was a law abiding citizen and the impugned order was passed to malign his and his wife's image. Learned counsel further submitted that the petitioner had not conducted himself in such a manner which invoked the jurisdiction of District Magistrate to pass the impugned order under sections 3 and 5 of the Act, 1990 after the first order of removal was passed on 8.12.2002.

9. Mr. Yashwant Singh Thakur, learned Govt. Advocate appearing for the State in support of the impugned order submitted that the petitioner was involved in several activities like theft, rioting, cheating, keeping unauthorized weapons, illicit liquors, causing terror in the mind of the general public, as such the witnesses were not willing to come forward to give evidence in public against the petitioner. The petitioner used to abscond after committing crime. The petitioner was also involved in terrorizing Nagar Panchayat President as such a proceeding under sections 107, 116(3) of the I.P.C. were initiated against the petitioner. The petitioner was habitual hardened criminal and he had not improved or mended his ways during the period of earlier order of removal.

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10. Having heard learned counsel for the parties and having perused the records filed with the petition by both the parties, it is found that the District Magistrate had examined each and every charge levelled against the petitioner and conduct of the petitioner, causing alarm, danger, rioting, and assaulting public and Govt. officials. It was further found that the public was so terrorise that even the witnesses were not coming forward to give evidence in public against the petitioner. The District Magistrate had further complied with the principles of natural justice by giving a show cause notice stating all the charges made against the petitioner and provided him an opportunity of mending his ways. The District Magistrate had considered the entire witnesses and submissions of the petitioner before passing the impugned order dated 23.12.2004. The appellate authority had also examined the matters in detail while confirming the impugned order dated 23.12.2004, and dismissed the appeal filed by the petitioner by impugned order dated 26.2.2005.

11. Learned counsel appearing for the petitioner had heavily relied on the decision dated 3.11.2003 passed by this Court in W.P.No. 2914 of 2003 (Krishna Datt Upadhyay Vs. State of Chhattisgarh & others). The said decision was passed in the facts of that case wherein it was found that there were no sufficient material before the District Magistrate to form an opinion to his satisfaction and further to reach to a conclusion that the petitioner was in association of unsocial elements involved himself in rioting, assaulting, criminal intimidation or political or communal activities which became danger for the maintenance of public order, peace and tranquility or in any way, the petitioner was involved in creating disharmony or hatred between the two communities.

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12. In the facts of the present case it is clearly established that the petitioner was involved in several offences like rioting, assaulting, criminal intimidation as such the petitioner became danger for the maintenance of the public order and peace. Having regard to the facts of the present case, the decision of this Court in the case of Krishna Datt Upadhyay (Supra) is not applicable.

13. The order of removal passed under section 3 and 5 of the Act, 1990 is preventive in nature and it is settled principles of law that the preventive orders are passed keeping in view the past activities of the person giving rise to the satisfaction of the authority. The Court can enquire into the availability of the material but the courts should refrain from enquiring reasonable subjective satisfaction of the District Magistrate on the basis of the materials available. In the present case the sufficient materials are available and have been found established after giving proper opportunity of hearing to the petitioner. There is no merit so as to call for the interference of this Court under Article 226 of the Constitution of India. Accordingly, the petition deserves to be dismissed.

14. The petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur